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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Implementation of Section 402(b)(2)(A) of
the Telecommunications Act of 1996

CC Docket No. 97-11

**LIMITED COMMENTS OF
DIGITAL NETWORK SERVICES, INC.**

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SUMMARY

In the subject proceeding the Commission seeks, *inter alia*, comment on whether the streamlined discontinuance procedures set forth in Section 63.71 of its rules, which currently apply only to domestic non-dominant carriers, should apply to all domestic common carriers, including dominant local exchange carriers. Digital Network Services, Inc. (“DNSI”) opposes the Commission’s proposal to extend the streamlined discontinuance procedures to all domestic common carriers because such an expansion of Section 63.71 would greatly increase the ability of dominant LECs to withdraw tariffed services that are invaluable to consumers and that are essential to competitors, thereby reducing competition in their service territories.

The Commission’s tentative conclusion supporting an expansion of 63.71 of its rules to all common carriers is wholly based on the premise that carriers only seek to discontinue service that is unprofitable. However, this tentative conclusion fails to recognize that incumbent LECs may seek to discontinue services in order to stifle competition in service areas that they are now permitted to enter or, in the future, maybe permitted to enter, as a result of the recent changes in the regulation of the telecommunications market in this country.

The ILECs’ incentive to do just this, and the potential negative impact of such action, is clearly illustrated by Southwestern Bell’s plan to eliminate important aspects of its Operator Transfer Service. Southwestern Bell’s Operator Transfer Service is a critical element in the provision of interexchange services offered by DNSI and other interexchange carriers. By discontinuing certain aspects of its Operator Transfer Service, Southwestern

Bell can effectively drive these carriers out of a significant portion of the interexchange market, while at the same time increasing the scope and volume of calls it handles and controls. For these reasons, DNSI respectfully urges the Commission not to extend the streamlined discontinuance procedures to all domestic common carriers.

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LIMITED COMMENTS OF
DIGITAL NETWORK SERVICES, INC.

Digital Network Services, Inc. ("DNSI"), by its attorneys, hereby submits limited comments on the Commission's *Notice of Proposed Rulemaking* issued in this proceeding¹ ("*Notice*") and states as follows:

On January 13, 1997, the Commission released its *Notice* in which it seeks, *inter alia*, comment on Section 214 discontinuance requirements.² Specifically, the Commission seeks comment on whether the streamlined discontinuance procedures set forth in Section 63.71 of its rules, which currently apply only to domestic non-dominant carriers, should apply to all domestic common carriers,³ including local exchange carriers ("LECs").

The Commission tentatively concludes that the streamlined procedures contained in Section 63.71 strike a reasonable balance between protecting consumers and reducing

¹Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996, Notice of Proposed Rulemaking, CC Docket No. 97-11, FCC 97-6, released January 13, 1997 ("*Notice*").

²Id. ¶¶68-71. DNSI's comments are limited to this single issue.

³Id. at ¶70.

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unnecessary barriers to exit for all carriers, whether dominant or non-dominant.⁴ This tentative conclusion is based on the premise that dominant LECs seek to discontinue service only when that service is unprofitable. However, that is not a correct premise. This conclusion ignores other reasons, including strategic reasons, that domestic dominant carriers may seek to discontinue service. In particular, the Commission fails to consider that incumbent LECs (“ILECs”) may seek to discontinue service in order to stifle competition in service areas that they are now permitted to enter or, in the future, maybe permitted to enter, as a result of recently promulgated Commission rules and the passage of the Telecommunications Act of 1996 (the “1996 Act”). DNSI opposes the Commission’s proposal to extend the streamlined discontinuance procedures to all domestic common carriers because such an expansion of Section 63.71 would greatly increase the ability of dominant LECs to withdraw tariffed services that are invaluable to consumers and that are essential to competitors, thereby reducing competition in their service territories.

Section 63.71 allows carriers to discontinue services merely by providing notice to all affected customers and providing the Commission with a description of the planned discontinuance. While customers receiving notice may object, the FCC will normally authorize the proposed discontinuance of service, unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier.⁵ Under the current rules,

⁴Id.

⁵47 C.F.R. §63.71.

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dominant carriers must file applications demonstrating that discontinuance, reduction, or impairment of the service would not adversely effect present or future public convenience and necessity.⁶

In its decision initially adopting Section 63.71, the Commission stated that the minimal restrictions on discontinuance of service contained in the then-new rule were appropriate for competitive carriers (i.e., those without market power).⁷ The Commission found that “simplifying applications for discontinuance of service, when service alternatives are likely to exist, is consistent with congressional intent.”⁸ In its *Notice of Inquiry and Proposed Rulemaking* in the same proceeding, the Commission recognized that a dominant carrier offering a given service may be the only carrier offering that service, and as a result, continued Commission scrutiny over the discontinuance of the service offered by a dominant carrier is warranted.⁹ The primary justification for the then-new rule section is the same as the reasoning

⁶See 47 C.F.R. §63.505(i) for the required contents of applications for any type of discontinuance, reductions, or impairment of telephone service not specifically provided for in the Commission rules. The rule sections that specifically provide the required contents of applications to discontinue certain telephone services contain a similar provision.

⁷Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, *First Report and Order*, 85 FCC 2d 1, 43 (1980) (“*First Report and Order*”).

⁸Id. (Emphasis added).

⁹Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, *Notice of Inquiry and Proposed Rulemaking*, 77 FCC 2d 308, 344 (1979).

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now put forth in the *Notice* — ease of exit to allow carriers to discontinue unprofitable service offerings, provided that service alternatives exist.¹⁰

The current proposal to extend Section 63.71 to all common carriers, if adopted, would enable any carrier to discontinue a particular service virtually without regulatory scrutiny, irrespective of whether service alternatives exist. Although the proposed rule would allow customers to object to the proposed service discontinuance if they are unable to receive service or a reasonable substitute from another carrier, the effect of the proposed rule would be to shift the burden of demonstrating that an alternative service exists from the carrier wishing to discontinue service to the customer or competitor that is dependent on that service.¹¹ In short, the extension of streamlined discontinuance procedures to ILECs, makes it much easier for them to discontinue a service even if such a discontinuance is anticompetitive and against the public interest.

The potential negative impact of the Commission's proposal to extend the streamlined discontinuance procedures of Section 63.71 to all domestic common carriers, including incumbent LECs, is clearly illustrated by the recent announcement of one such ILEC — Southwestern Bell ("SWB") — that it plans to eliminate important aspects of its Operator

¹⁰*First Report and Order*, *supra* at 49.

¹¹If the Commission implements its proposal, the advance notification period contained in Section 63.71 must be extended to a minimum of 60 days to ensure customers adequate opportunity to meet this shifted burden of demonstrating that an alternative service exists.

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Transfer Service.¹² Operator Transfer Service is a service whereby LEC operators route calls originated by callers dialing the digit "0" and nothing else (so-called "0-" calls) to participating interexchange carriers. DNSI is an interexchange telecommunications carrier whose services include provision of interexchange service from public telephones primarily owned by Bell Operating Companies ("BOCs"), including SWB, and other LECs. Much of DNSI's business originates in SWB's territory and the provision of its service is dependent on the availability of SWB's Operator Transfer Services.

Currently, callers dialing 0 and asking to place an interLATA call are asked by the SWB operators whether they have a preferred IXC. Those who do not express a carrier preference are offered a choice of IXCs from a randomly-generated list of IXCs that participate in the Operator Transfer Service. Operator Transfer Call Service is invaluable to many callers who are unfamiliar with the nuances of 0+ calling or access code-based services, and who often do not even have residential telephone service.¹³ Operator Transfer Service also enables callers

¹²Letter from J. Paul Walters, Attorney, Southwestern Bell Telephone to Ms. Regina M. Keeney, Chief, Common Carrier Bureau, dated February 4, 1997.

¹³It has been DNSI's experience that many users of operator transfer service are callers without telephone accounts of their own. These callers generally have no preexisting relationship with any LEC or IXC. In addition, many of these callers are immigrants that speak little or no English. For these reasons, DNSI and other providers serving the 0- calling market have become highly specialized and operate in a niche market that is generally underserved by the major carriers. For example, DNSI's operator center is constantly staffed with foreign language operators to assist those callers that speak little or no English. DNSI even offers a translation service that enables non-English speaking telephone customers to communicate with called persons.

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to complete interLATA calls in circumstances when the IXC serving the originating telephone on a presubscribed basis either is experiencing a temporary service disruption or has — for whatever reason — ceased providing service.

DNSI and other companies specialize in accommodating the unique calling needs of such callers and are prepared to handle calls that reach their operator centers on a 0- transfer basis.

SWB can effectively drive DNSI and other companies specializing in such services out of business or at least out of that segment of the interexchange business simply by discontinuing the randomly-generated list of participating IXCs from its Operator Transfer Service. In addition, current Commission rules and the 1996 Act provide SWB, and the other BOCs, with every incentive to do so.

In its recent *Pay Telephone Reclassification Order*,¹⁴ the Commission promulgated new rules governing provision of pay telephone services. The Commission concluded that BOCs, including SWB, should be allowed to negotiate with pay telephone location providers regarding selection of presubscribed interLATA carriers from pay telephones. Thus, as a result of that new policy, it will become possible for SWB to select the provider of operator-assisted calling services from pay telephones. Obviously, SWB has every incentive to select only those operator service providers with which it has favorable contract terms. In addition, allowing the BOC to increase the scope and volume of calls to be handled by carriers selected by it (*i.e.*, inclusion

¹⁴Implementation of the Pay Telephone Reclassification Provisions of the Telecommunications Act of 1996, *Report and Order*, 4 Comm. Reg. (P & F) 938, *Order on Reconsideration*, 5 Comm. Reg. (P & F) 321 (1996).

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of 0- as well as 0+ calls), rather than by the calling parties, can hardly be said to promote consumer choice or to stimulate competition in the provision of those services.

Moreover, SWB and the other BOCs are poised to apply for authority to provide in-region interLATA service pursuant to the application procedures set forth in Section 271 of the Communications Act of 1934, as amended.¹⁵ Thus, in the not-to-distant future, it may be possible for the BOCs, including SWB, not only to select the provider of 0+ and 0- calls from the hundreds of thousands of pay telephones in their service territories, but also to select themselves to carry that traffic. This gives the BOCs and other LECs every incentive to withdraw those service offerings that current and potential future competitors such as DNSI rely on in the provision of their service.

¹⁵47 U.S.C. §271.

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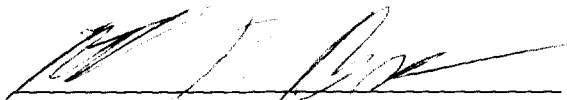
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WHEREFORE, DNSI respectfully urges the Commission not to extend the streamlined discontinuance procedures to all domestic common carriers because such an expansion of Section 63.71 would greatly increase the ability of dominant LECs to withdraw service offerings that are invaluable to consumers and to competitors who offer services in competition with those of the dominant ILECs.

Respectfully submitted,

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February 24, 1997

CERTIFICATE OF SERVICE

I, Antoinette R. Mebane, hereby certify that on this 24th day of February 1997, copies of the foregoing *Limited Comments of Digital Network Services, Inc.* was served via *hand delivery* to the following:

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Dated: February 24, 1997